IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 438 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAGNATHBHAI PREMABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 438 of 2003

MR P.S.CHAUDHARY with MR PS CHAUDHARY for Petitioner No. 1

MR I.M.PANDYA, APP for Respondent No. 1

MR MC BAROT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/03/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the

petitioner Mr. S.V.Raju with learned advocate Mr. P.S.Chaudhary and Mr. M.C.Barot appearing for respondent No.1 Original Complainant. I have also considered the submissions of learned APP Mr. Pandya.

2. My attention has been drawn to certain aspects from the facts emerging from the record especially charge framed and the proceeding is drawn by the learned Additional Sessions Judge while framing the charge on the day on which the charge under challenge was framed.

3. Undisputedly, the day on which the charge was framed against the petitioner, nobody defending him was present because no formal "Vakalat-Nama" was on record by the petitioner. It is submitted that as per the scheme of Section 227 and 228 of Cr.P.C. the accused should be offered an opportunity if he intends to resist the framing of the charge, particularly, when a person is facing a serious trial of a murder case he should be asked whether he intends to engage Advocate or need help of a counsel in such a situation irrespective of the reply given by the concerned accused in the committal proceeding. My attention has been drawn by Mr. S.V.Raju to the following two decisions;

(i) Vedva Vaghari Ramesh Ramabhai v. State of Gujarat, 1994(1) GLR, 901.

(ii) Suk Das and another v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991.

Placing reliance on these very decisions, this Court, while dealing with Criminal Revision Application No. 91 of 2004 this Court has quashed the charge framed and has directed the learned Additional Sessions Judge, City Civil Court, Ahmedabad to undergo the formalities, discharge legal obligation in this regard so that accused can put his say before the Court of Sessions when it takes actual cognizance by framing the charge against the concerned accused. Learned advocate Mr. M.C.Barot also submits that the anxiety of the complainant is that two witnesses of advanced age are important witnesses in the trial and the protection of trial may result into miscarriage if any unforeseen event occurs.

4. In case of Vedva Vaghari Ramesh Ramabhai (supra), the Court was dealing with a conviction appeal and while remanding the matter to the trial court, the Court has considered the relevant para 125 of Criminal Manual and rules framed by the High Court under Section 304(2) of the Code of Criminal Procedure. While remanding the

matter to the trial court, the Court has observed finding mainly on one ground saying that even though, opponent inquiry by the learned Committal Magistrate, the accused had stated that he would not require the legal assistance at the cost of the State. The very same exercise was once again required to be done by the learned Sessions Judge before whom the trial had commenced. If, this is not done, then it would be a clear violation of the letter and spirit of Article 21 of the Constitution of India. The Court said that such technical procedural flaw results into violation of Constitutional guarantee provided to the accused. The grievance expressed by the present petitioner can be said to be similar, and such procedural flaw has been pleaded specifically. In this decision, this Court (Coram: S.D.Dave,J) has observed that;

"(9) Section 304(2) of the Code enables the High Court to frame the Rules in the above said respect with the prior approval of the State Government. It appears that, in exercise of such powers of the High Court of Gujarat has framed the Rules with the previous approval of the Government of Gujarat. A reference to said Rules would go to show that, firstly the task of the Courts before which the accused persons stand their trial. So far as the committal proceedings are concerned, Rule 3 (iii)(a) would go to show that same procedure is applicable to the committal proceedings also and the Committing Magistrate has to ascertain whether the accused has or had not sufficient means to engage a pleader for his defence at his cost. A conjoint reading of Art. 21 of the Constitution of India and the provisions contained in Sec. 304 of the Code of 1973 and para 125 of the Criminal Manual and the rules which are known as the Gujarat Legal Aid to the Accused Expenses rules, 1976, it cannot be urged that such a procedural formality is not required to be undergone by the Sessions Court, when the accused had stated before the Committing Magistrate that, he would make his arrangement for his defence and that, he would require the legal assistance at the cost of the State. On the contrary, it is clear that, in Sessions Case the trial commences not at the committal level but at the level when the charge is framed and the plea of the accused is being recorded by the Sessions Court. To argue or to accept that such a formality is not required to be undergone at the Sessions trial level would

run counter to what has been commanded by the Constitution of India, the Code of Criminal Procedure, 1973 and the relevant provisions in the Criminal Manual."

5. I would like to mention that in case of Akhatribai & Ors. v. State of Bihar & Ors., AIR 1981 SC 928, the Apex Court has emphasized that the case of an accused has to be taken and dealt with by the Court in light of Article 21 and 39A of the Constitution of India, not only at the stage of trial but also at the stage when person accused is first produced before the Magistrate as also when he is appearing during trial from time to time.

6. In case of Suk Das (supra) the Apex Court has held that;

"It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.....The exercise of fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance, the trial may lawfully proceed without adequate legal representation being afforded to him."

7. In the present case undisputedly, the accused was not afforded any legal assistance and the grievance expressed before the Court today is that, but for want of proper legal assistance he has been dragged to a trial of a very serious offence of murder though there is no legal prima facie evidence of commission of such a serious offence. The accused is required to be heard before framing of the charge. If nothing is submitted on behalf of the accused or accused invites charge with a view to have a clean acquittal, then it is required to be mentioned in the proceedings drawn by the Court. Resistance, if any, also should be dealt with in light of accepted principles of law.

8. So, without entering into merits of the case against the accused, the Court is inclined to quash the charge framed by the trial court with a direction to offer an opportunity to the accused. If an application for discharge is submitted, then the same shall be heard and decided immediately. I am told that the accused

shall pray and file such application within one week from today without seeking any extension of time before the trial court and the trial court shall decide such application very expeditiously. Mr. S.V.Raju states that accused now has managed for Advocate and formal Vakalatnama is filed so he may not have any objection if the charge is framed after offering an opportunity to the accused and the accused shall cooperate with the hearing and the conduction of the trial. Directions accordingly.

9. In view of the above order, charge is hereby quashed and the learned Trial Judge is directed to undergo the formalities of framing of the charge in light of the above observations made and the ratio propounded in the two decisions referred hereinabove.

Rule is made absolute in above terms. Direct service is permitted to original complainant.

(C.K.Buch,J)
Jayanti*